



IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
BEAUFORT DIVISION

CLEVELAND WINSTON KILGORE JR,
Petitioner,

vs.

WARDEN DARLENE DREW,
Respondent.

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CIVIL ACTION NO. 9:08-02299-HFF-BM

ORDER

This case was filed as a 28 U.S.C. § 2243 action and construed by the Magistrate Judge as an action under 28 U.S.C. § 2241. Petitioner is proceeding pro se. The matter is before the Court for review of the Report and Recommendation (Report) of the United States Magistrate Judge suggesting that the petition be dismissed without prejudice and without requiring Respondent to file a return. The Report was made in accordance with 28 U.S.C. § 636 and Local Civil Rule 73.02 for the District of South Carolina.

The Magistrate Judge makes only a recommendation to this Court. The recommendation has no presumptive weight. The responsibility to make a final determination remains with the Court. *Mathews v. Weber*, 423 U.S. 261, 270 (1976). The Court is charged with making a de novo determination of those portions of the Report to which specific objection is made, and the Court may accept, reject, or modify, in whole or in part, the recommendation of the Magistrate Judge or recommit the matter with instructions. 28 U.S.C. § 636(b)(1).

The Magistrate Judge filed the Report on July 18, 2008, and the Clerk of Court entered Petitioner's objections to the Report on July 29, 2008.

After a thorough review of the Report and the record in this case pursuant to the standard set forth above, the Court overrules Petitioner's objections, finding them to be without merit, and adopts the Report and incorporates it herein. Therefore, it is the judgment of this Court that the petition be **DISMISSED** without prejudice and without requiring Respondent to file a return.

IT IS SO ORDERED.

Signed this 18th day of September, 2008, in Spartanburg, South Carolina.

s/ Henry F. Floyd
HENRY F. FLOYD
UNITED STATES DISTRICT JUDGE

NOTICE OF RIGHT TO APPEAL

The parties are hereby notified of the right to appeal this Order within 60 days from the date hereof, pursuant to Rules 3 and 4 of the Federal Rules of Appellate Procedure.